

STATE OF MICHIGAN
COURT OF APPEALS

CITIBANK, NA,

Plaintiff/Counter-Defendant-
Appellee,

v

SILVIA MULDROW,

Defendant/Counter-Defendant-
Appellant.

UNPUBLISHED
November 22, 2011

No. 298853
Wayne Circuit Court
LC No. 09-021491-CK

Before: M. J. KELLY, P.J., and SAAD and O'CONNELL, JJ.

PER CURIAM.

In this suit for breach of contract and counter-suit for fraud, defendant Silvia Muldrow appeals by right the trial court's order granting defendant Citibank, NA's motion for summary disposition. Because we conclude that there were no errors warranting relief, we affirm.

In November 2009, Citibank sued Muldrow for breach of contract. Citibank alleged that Muldrow entered into a credit card agreement with it, made purchases or cash advances on the account over a period of years, and ultimately failed to make her payments. It alleged that the total amount due was \$34,208.91. Muldrow represented herself and submitted an answer denying that she had a contract with Citibank or that she owed it any money. She also filed a counter-claim alleging that Citibank committed fraud by preparing and submitting a "false document" to the trial court.

Citibank moved for summary disposition under MCR 2.116(C)(8) and (C)(10) in March 2010. In its motion, Citibank argued that it had a credit card contract with Muldrow, that she breached that contract by failing to make the required payments, and that the amount due was \$34,208.91. In support of its motion, Citibank submitted a copy of the terms and conditions of the contract, a copy of Muldrow's monthly statements from the start of the account, copies of some of the checks that Muldrow sent as payment, and an affidavit. Citibank also argued that Muldrow's fraud claim was not pleaded with the required particularity and should be dismissed.

In response to Citibank's motion, Muldrow argued that Citibank's documents were unsigned and unsupported and, therefore, could not be used to support its motion. She also argued that the affidavit was invalid, that Citibank lacked standing to sue because it was not registered to do business in Michigan, had unclean hands, and violated federal law in seeking to collect the debt.

After a hearing, the trial court granted Citibank's motion. The trial court entered a judgment for \$34,524.45 in favor of Citibank in June 2010. This appeal followed.

On appeal, Muldrow argues that the trial court erred when it granted Citibank's motion for summary disposition because, in relevant part, Citibank did not support its motion with admissible evidence. This Court reviews de novo a trial court's decision whether to grant summary disposition. *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 369; 775 NW2d 618 (2009).

When moving for summary disposition under MCR 2.116(C)(10), the moving party must support its motion with affidavits, depositions, admissions, or other documentary evidence. MCR 2.116(G)(3). Further, the trial court may only consider the submissions to the extent that "the content or substance *would* be admissible as evidence" MCR 2.116(G)(6) (emphasis added). As this Court has explained, the submissions do not need to be in admissible form; they need only be admissible in substance. See *Barnard Mfg*, 285 Mich App at 373. Where there is a plausible basis for the admission of the documents, the trial court may properly consider those documents. *Id.*

In the present case, Citibank submitted numerous documents that showed that it had lent money to Muldrow under a credit card agreement. Although Citibank arguably did not include an affidavit that would establish a proper foundation for the admission of the documents, the documents were nevertheless plausibly admissible as records of regularly conducted activity. See MRE 803(6). As such, the trial court could properly consider them. *Barnard Mfg*, 285 Mich App at 373-374. Further, the records plainly established that Muldrow applied for a credit card, which application was approved, transferred a substantial balance to the account, made numerous purchases on the account, made some payments, and ultimately breached the agreement by failing to make the required payments. This evidence was minimally sufficient to establish a meeting of the minds as to the material terms of a lending agreement, Muldrow's breach of that agreement, and the amount of Citibank's damages. See *Hess v Cannon Twp*, 265 Mich App 582, 592; 696 NW2d 742 (2005) (noting the elements to form a contract); *Stoken v JET Electronics & Technology, Inc*, 174 Mich App 457, 463; 436 NW2d 389 (1988) (stating that, in order to prove breach of contract, the plaintiff must prove the existence of a contract, a breach of the contract, and damages). Because Citibank properly supported its motion for summary disposition, Muldrow had to respond by presenting evidence that established a question of fact on at least one element of Citibank's claim, which she did not do. *Barnard Mfg*, 285 Mich App at 374. Therefore, the trial court properly granted Citibank's motion.

On appeal, Muldrow continues to argue that Citibank lacked standing to sue in Michigan, that it had to prove that it was assigned the note, and that it violated federal law. However, Muldrow presents these claims of error without meaningful citation to the law or record evidence. Therefore, she has abandoned these claims of error on appeal. *Hamade v Sunoco, Inc (R & M)*, 271 Mich App 145, 173; 721 NW2d 233 (2006). In any event, even if she had not abandoned these claims of error, we conclude that they are without merit.

There were no errors warranting relief.

Affirmed.

/s/ Michael J. Kelly
/s/ Henry William Saad
/s/ Peter D. O'Connell